

**DEPARTMENT OF STATE REVENUE**  
**LETTER OF FINDINGS NUMBER 00-0058**  
**SALES AND USE TAX**  
**For Tax Periods: 1995-1998**

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**Issues**

**1. Sales and Use Tax** – Subscriptions for Journals and Manuals

**Authority:** IC 6-2.5-3-2 (a), IC 6-2.5-3-1 (a), 45 IAC 2.2-5-59 (a), Information Bulletin # 10, dated February 10, 1986.

Taxpayer protests the assessment of tax on subscriptions for journals and manuals.

**2. Sales and Use Tax** – Software Support Maintenance Agreements

**Authority:** IC 6-2.5-3-2, Sales Tax Information Bulletin #2 dated August, 1991.

Taxpayer protests the assessment of tax on software support maintenance agreements.

**3. Sales and Use Tax**- Duplicates

**Authority:** None

Taxpayer protests certain duplicate tax assessments.

**4. Sales and Use Tax** –Staple Guns and Staples

**Authority:** IC 6-2.5-4-1 (b), IC 6-2.5-3-2, IC 6-2.5-5-18 (a), 45 IAC 2.2-5-27, 45 IAC 2.2-5-28 (g&h).

Taxpayer protests the assessment of tax on staple guns and staples.

## **5. Sales and Use Tax – Blood Glucose Test Strips**

**Authority:** IC 6-2.5-5-18 (e).

Taxpayer protests the assessment of tax on blood glucose test strips.

### **Statement of Facts**

Taxpayer is a for-profit hospital which provides both out-patient and in-patient services. Taxpayer claimed refunds which have been ruled upon. Taxpayer also has assessments pursuant to an audit. Taxpayer protests certain of these assessments and a hearing was held. Further facts will be provided as necessary.

## **1. Sales and Use Tax – Subscriptions for Journals and Manuals**

### **Discussion**

IC 6-2.5-3-2 (a) imposes the use tax as follows:

An excise tax, known as the use tax, is imposed on the storage, use, or consumption of tangible personal property in Indiana, if the property was acquired in a retail transaction, regardless of the location of that transaction or of the retail merchant making that transaction.

The word “use” is defined at IC 6-2.5-3-1 (a) as follows:

“Use” means the exercise of any right or power of ownership over tangible personal property.

Taxpayer is a member of several professional associations and paid subscriptions to those professional associations for professional educational journals and manuals. Taxpayer protested the use tax assessed on these journals and manuals. Taxpayer withdrew its protest to the subscription for a CPT Main Book purchased from the American Medical Association on December 14, 1995.

Taxpayer contends that the subscriptions qualify for exemption pursuant to IC 6-2.5-5-26 which states:

- (1) Sales of tangible personal property are exempt from the state gross exemption under IC 6-2.1-2-19, IC 6-2.1-3-20, IC 6-2.1-3-21, or IC 6-2.1-3-22;
- (2) the seller is not operated predominantly for social purposes;
- (3) the property sold is designed and intended primarily either for the organization’s educational, cultural, or religious purposes, or for improvement of the work skills or professional qualifications of the organization’s members; and

- (4) the property sold is not designed or intended primarily for use in carrying on a private or proprietary business.

This exemption is further explained at 45 IAC 2.2-5-59 (a) as follows:

The state gross retail tax shall not apply to sales by qualified not-for-profit organizations of tangible personal property of a kind designed and intended to improve the skill or professional qualification of members of the organization for carrying on the work or practice of their trade, business or profession and not used in carrying on a private or proprietary business.

Departmental policy has consistently exempted sales of educational professional journals by not-for-profit organizations to their member organizations. Information Bulletin # 10, dated February 10, 1986.

### **Finding**

Taxpayer's protest is sustained.

## **2. Sales and Use Tax – Software Support Maintenance Agreements**

### **Discussion**

Taxpayer's second point of protest concerns the assessment of use tax on software support maintenance agreements pursuant to IC 6-2.5-3-2. Taxpayer purchased software support maintenance agreements for two software programs. The Indiana Department of Revenue policy concerning warranties and maintenance agreements is stated in Sales Tax Information Bulletin #2 dated August, 1991 as follows:

Optional extended warranties and maintenance agreements are offered as a separate added amount to the purchase price of property being sold and a fixed sum is charged for the furnishing of tangible personal property throughout the term of the warranty or the agreement. Optional warranties and maintenance agreements are not subject to sales or use tax. Optional warranties and maintenance agreements are not subject to tax because the purchase of the warranty or maintenance agreement is the purchase of an intangible right to have property supplied and there is no certainty that property will be supplied. However, if the agreement includes a charge for property to be periodically supplied the agreement would be subject to tax.

Taxpayer submitted a copy of the contract for one of the agreements and promotional materials concerning the other maintenance agreement. Both agreements provide telephone support, correction of programming errors and updates if they are produced in response to new laws or governmental regulations. Neither agreement guarantees the provision of software updates. Since there are no guarantees that personal property will

be supplied during the contract period, the software support maintenance agreements qualify for exemption from the use tax.

### **Finding**

Taxpayer's second protest is sustained.

### **3. Sales and Use Tax - Duplicates**

#### **Discussion**

Taxpayer protests the assessment of tax on two duplications in the audit. Both duplicate items are on page 75 of the audit and are assessments on software support maintenance agreement payments. Taxpayer's protest on this issue was sustained, so the assessments will be removed from the audit for that reason. The issue of the duplication is moot.

### **Finding**

The issue is moot.

### **4. Sales and Use Tax – Staple Guns and Staples**

Selling at retail is defined by IC 6-2.5-4-1 (b) as:

- A person is engaged in selling at retail when in the ordinary course of his regularly conducted trade or business, he:
- (1) acquires tangible personal property for the purpose of resale; and
  - (2) transfers that property to another person for consideration.

In the context of medical supplies, an item is considered to be sold at retail to the patient if the item is retained by the patient and the sales and use tax would apply to the transaction pursuant to IC 6-2.5-3-2. However, certain exemptions apply to the sale of medical supplies and equipment. The pertinent statute for the medical supplies and equipment at issue is IC 6-2.5-5-18 (a) which states:

Sales of artificial limbs, orthopedic devices, dental prosthetic devices, eyeglasses, contact lenses, and other medical equipment, supplies and devices are exempt from the state gross retail tax, if the sales are prescribed by a person licensed to issue the prescription.

The items in question are used per a doctor's prescription, as defined by 45 IAC 2.2-5-27. The statute's application is further defined by 45 IAC 2.2-5-28 (g & h).

(g) The sale to the user of medical equipment, supplies, or devices prescribed by one licensed to issue such a prescription are exempt from sales and use tax.

(h) The term "medical equipment, supplies or devices", as used in this paragraph, are those items, the use of which is directly required to correct or alleviate injury to malfunction of, or removal of a portion of the purchaser's body.

Taxpayer purchases staplers and staples that are used in surgery. Taxpayer purchases staple guns that are preloaded with staples and disposable after a single usage, reusable, and staples guns without staples and separate purchases of staples for use with the staple guns without staples. Departmental policy allows exemption for the staples pursuant to the medical equipment exemption as stated above because the staples are actually used in the body to close wounds after surgery. This use is in the body to directly help the body heal. Therefore the staples qualify for the medical equipment exemption. The staplers themselves are indirectly used because they insert the staples into the patient. They do not directly aid in the healing process. They merely deliver the exempt medical equipment into the patient. Taxpayer protests the fifty percent assessment on only the staplers that are preloaded with staples and disposable after a single usage. There was a fifty per cent assessment to allow the exemption for the staples while taxing the staplers. Taxpayer contends that these disposable staplers with staples are purchased as a unit with the primary and only function of directly correcting or alleviating injury to the patient. The Indiana Department of Revenue has consistently held that a pro rata assessment to allow for the medical equipment exemption is the correct way to assess tax against the disposable staplers which are preloaded with staples.

#### **Finding**

Taxpayer's protest is denied.

### **5. Sales and Use Tax-Blood Glucose Test Strips**

#### **Discussion**

Taxpayer's final point of protest concerns the assessment of tax on blood glucose test strips which it sells to patients. Taxpayer contends that blood glucose test strips qualify for exemption pursuant to IC 6-2.5-5-18 (e) which provides exemption for "sales of equipment and devices used to administer insulin."

Blood glucose test strips are used to test a diabetic patient's blood to determine sugar levels and how much insulin is needed. The blood glucose test strips do not actually administer the insulin into the patient's body as required for exemption. Therefore the blood glucose test strips do not qualify for exemption.

#### **Finding**

Taxpayer's protest is denied.